

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CASEY H. PERRY,	Case No. 24-10194
Plaintiff,	
v.	Susan K. DeClercq
	United States District Judge
RYAN SILVERTHON,	
Defendants.	Curtis Ivy, Jr.
_____ /	United States Magistrate Judge

**ORDER DENYING PLAINTIFF’S SECOND MOTION TO COMPEL AS
MOOT (ECF No. 35)**

I. PROCEDURAL HISTORY

Plaintiff Casey H. Perry filed this *pro se* complaint on January 24, 2024, and amended on April 22, 2024. (ECF Nos. 1, 15). Plaintiff filed one motion to compel discovery on July 30, 2024, which the Court granted. (ECF Nos. 30, 33). Plaintiff then filed a second motion to compel discovery on September 4, 2024. (ECF No. 35). Defendant Ryan Silverthon responded. (ECF No. 36). This case was referred to the undersigned for all pretrial matters. (ECF No. 16).

II. DISCUSSION

Plaintiff is incarcerated in Macomb Correctional Facility. (ECF No. 1). He moves to compel Silverthon to produce “for inspection and copying the documents of: Plaintiff’s Interrogatories and Request for Discovery of Disclosure; Plaintiff’s First Request for Production Documents and Plaintiff’s Requests Admissions From

the Defendant.” (ECF No. 35, PageID.299). He states that he mailed these documents on May 30, 2024 and mailed his motion to compel on July 22, 2024. (*Id.*). He claims that this is his second time requesting the documents from Defendant, and that Defendant is “nearly 90 days late,” in violation of the 30 day limit in Fed. R. Civ. P. 33 and 34. (*Id.*).

This motion will be **DENIED AS MOOT** in light of Defendant’s response. (ECF No. 36). Defendant states that he has “repeatedly served [Plaintiff with] hard copies” of the requested discovery. (*Id.* at PageID.302). He also states that these documents were delivered via certified U.S. mail with a return receipt, and that he has contacted the Michigan Department of Corrections to ensure the mail was delivered to Plaintiff. (*Id.* at PageID.303). Defendant has attached copies of his certified mail receipts and certificate of service of discovery responses for the discovery requests.¹ (ECF Nos. 36-1, 36-2). Because the discovery responses were sent to Plaintiff, the motion to compel is **MOOT**.

IT IS SO ORDERED.

¹ Defendant previously attempted to file a notice regarding the first motion to compel certifying service of discovery and compliance with the Order. (ECF No. 34). This notice was stricken, as it was prohibited discovery, disclosure or a certificate of service thereof. Here, Defendant states that “[b]ecause of the prohibition of filing discovery to the federal docket,” he “defers to attach exhibits providing copies of . . . his complete discovery responses.” (ECF No. 36, PageID.303). No such exhibits are attached. That said, the certified mail receipts and certificate of service attached as exhibits to his current response is sufficient to show that Defendant has served Plaintiff with the discovery responses.

The parties here may object to and seek review of this Order, but are required to file any objections within 14 days of service as provided for in Federal Rule of Civil Procedure 72(a) and Local Rule 72.1(d). A party may not assign as error any defect in this Order to which timely objection was not made. Fed. R. Civ. P. 72(a). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. When an objection is filed to a magistrate judge's ruling on a non-dispositive motion, the ruling remains in effect unless it is stayed by the magistrate judge or a district judge. E.D. Mich. Local Rule 72.2.

Date: September 16, 2024

s/Curtis Ivy, Jr.
Curtis Ivy, Jr.
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned certifies that this document was served on counsel of record and any unrepresented parties via the Court's ECF System or by First Class U.S. mail on September 16, 2024.

s/Sara Krause
Case Manager
(810) 341-7850